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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. TIFFANY MOUNT, Defendant and Appellant.	A131559 (Solano County Super. Ct. No. FCR249525)

Appellant Tiffany Mount was charged by felony complaint with taking more than $400 worth of property from Mervyn's. She pled no contest to felony grand theft of personal property (Pen. Code, former § 487, subd. (a))[1] and was placed on probation for three years. Mount's probation was ultimately revoked and she was sentenced to serve 16 months in state prison. Mount contends that the trial court abused its discretion in finding she willfully violated a term of her probation. She also contends the trial court should have awarded her additional presentence credits for jail time served following earlier violations of her probation. We affirm.

I. BACKGROUND

On December 19, 2007, pursuant to the plea bargain, the trial court suspended imposition of sentence and placed Mount on probation for three years. The court imposed numerous probation terms and conditions, including that Mount serve 63 days in county jail, "report to and comply with all orders of [her] probation officer," "attend

[1] Unless otherwise noted, all further statutory references are to the Penal Code.

counseling or therapy as Probation directs," and "advise Probation of [her] employment and residence location, and notify them in writing of any changes within 48 hours." Mount was also ordered to pay a restitution fine of $200 (former § 1202.4), a $10 crime prevention fine (§ 1202.5), a $200 stayed probation revocation fine (§ 1202.44), and a security surcharge fee of $20 (former § 1465.8).

In November 2008, a bench warrant was issued for Mount's arrest based on her failure, inter alia, to report to the Solano County Probation Department (Probation). On January 20, 2009, Mount, represented by counsel, admitted the probation violation. Thereafter, the court revoked and reinstated Mount's probation on the condition that she serve 60 days in county jail.

In November 2009, Probation again alleged that Mount had violated the terms of her probation by failing to attend counseling and therapy. On January 4, 2010, after a contested hearing, the trial court found that Mount had violated probation. On February 1, 2010, the court revoked and reinstated her probation on the condition that she serve 61 days in county jail and waive custody credits (February 1, 2010 Order).

In October 2010, another bench warrant issued. Probation alleged that Mount had failed to maintain contact with Probation, failed to make payments toward fines and fees, and failed to timely report changes in her contact information. After a contested revocation hearing, on January 24, 2011, the trial court found that Mount had violated probation by failing to report on a monthly basis. Mount's probation was revoked and the matter was continued for sentencing.

On February 15, 2011, the trial court denied a further grant of probation and sentenced Mount to 16 months in state prison. She was given presentence custody credit for 165 days, of which 83 were actual days in custody following her most recent arrest, with the remaining 82 days credited under section 4019. On March 1, 2011, Mount filed a "Motion Inviting the Court to Recalculate Presentence Custody Credits," in which she argued that her waiver of custody credits on her previous probation violation was invalid

because it was not knowing and intelligent. On March 15, 2011, after her motion to recalculate was denied, Mount filed a notice of appeal.[2]

II. DISCUSSION

Mount contends that the trial court abused its discretion in finding she willfully violated the terms of her probation. Mount further contends that she was entitled to a full award of presentence credits because her previous waiver of such credits was not knowing and intelligent. Mount's claims are without merit.

A. *Failure to Maintain Contact with Probation*

Mount argues that the trial court abused its discretion in finding she willfully failed to maintain contact with her probation officer. "[A] court may revoke and terminate . . . probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . . However, probation shall not be revoked for failure of a person to make restitution pursuant to Section 1203.04 as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay." (§ 1203.2, subd. (a).) The People are required to prove a probation violation by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447.) However, "[a] court may not revoke probation unless the evidence supports 'a conclusion [that] the probationer's conduct constituted a willful violation of the terms and conditions of probation.' [Citation.]" (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295 (*Cervantes*).)

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[2] An order granting probation and suspending imposition of sentence is deemed a final judgment of conviction from which an appeal may be taken. (§ 1237, subd. (a); *People v. Howard* (1997) 16 Cal.4th 1081, 1087; *People v. Richardson* (2007) 156 Cal.App.4th 574, 582, fn. 2.) Accordingly, an order revoking probation or modifying its terms is appealable as an "order made after judgment, affecting the substantial rights of the party." (§ 1237, subd. (b); *People v. Vickers* (1972) 8 Cal.3d 451, 453, fn. 2; *People v. Tijerina* (1969) 1 Cal.3d 41, 47–48; *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421.)

A willful violation requires " 'simply a purpose or willingness to commit the act . . . ,' without regard to motive, intent to injure, or knowledge of the act's prohibited character. [Citation.] The terms imply that the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citation.] Stated another way, the term 'willful' requires only that the prohibited act occur intentionally. [Citations.]" (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438.) "Where a probationer is unable to comply with a probation condition because of circumstances beyond his or her control and defendant's conduct was not contumacious, revoking probation and imposing a prison term are reversible error. [Citation.]" (*Cervantes, supra,* 175 Cal.App.4th at p. 295 [deported probationer did not willfully fail to attend hearing]; accord, *People v. Zaring* (1992) 8 Cal.App.4th 362, 379 (*Zaring*) [probationer's late court appearance due to unforeseen circumstances was not willful].)

"A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner. [Citations.]" (*People v. Delson* (1984) 161 Cal.App.3d 56, 62.)

1. *Background*

Cari Reeves, the deputy probation officer supervising Mount, testified that Mount was directed, as of May 5, 2010, to report monthly via the Probation telephone reporting system. She described the telephone reporting system as "a 24-hour, 7 day a week system, where the defendant, rather than coming in to meet with me once a month, is required to make a telephone call once a month." Directions for using the system were mailed to Mount's last reported address. Between May 5, 2010, and September 29, 2010, Probation did not receive any phone calls through the system from Mount. Reeves testified that probationers are required to pay $4 per month, plus a $1 processing fee to use the telephonic reporting system. No such payments had ever been received from Mount. With respect to fines and fees required under Mount's order of probation, Reeves testified that Mount had previously made two payments, totaling $75—$190 remained outstanding. Mount's most recent payment was on September 18, 2009.

On cross-examination Reeves testified that, "[u]p until December of 2010, the only way to make a payment [for the phone reporting system] was through a money order through the United States Postal Service." Reeves did not know how much the money order would have cost. Reeves was asked: "Did anyone ever call you to express that they were not able to report to the phone reporting system?" She answered: "Yes." Per Probation's policy at the time, they were told that they didn't have a choice and that a regular phone call to Probation would not count towards the reporting requirement. Reeves also testified that Probation did not make any finding regarding Mount's ability to pay the phone reporting fee.

Mount presented no evidence at the hearing. But, her counsel argued: "[W]ith regard to the . . . failure to report, there hasn't been any evidence of a willful violation, because in order to find a willful violation, there would have to be a finding made with regard to ability to pay." The People conceded that there was insufficient evidence that Mount had failed to timely report an address change.

In finding that Mount violated the reporting requirement, the court said: "I agree that she has been out of contact. The question is, whether or not it's been willful, and I haven't heard the evidence, except that she was to make the monthly calls to [P]robation. She accepted those terms. . . . [T]here's no evidence that she didn't agree to do that, and whether or not she had some inability to pay is not shown by the evidence. There is nothing to indicate that she didn't have the ability . . . so the Court is going to go on the assumption that having in mind the terms and conditions of the reporting system, and not taking any steps, or giving any notification to the probation officer at the time she accepted the responsibility of telephone reporting, that she intended and *had the ability to comply*. [¶] The other option, I guess, she could have walked into the probation office every month and said, 'Here I am. I don't have the money to buy a money order,' I guess. [¶] So I'm going to find a violation, failing to comply by reporting on a monthly basis." (Italics added.)

Mount filed a motion for reconsideration, in which she argued: "[A]lthough fines, fees, and restitution may be ordered without a finding of a person's ability to pay,

'probation shall not be revoked for failure of a person to make restitution pursuant to Section 1203.04 as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay.' [(§ 1203.2, subd. (a); *Bearden v. Georgia* (1983) 461 U.S. 660.)]" (Italics, bolding & underlining omitted.) Mount further contended that the court's ruling should be reconsidered because "there was zero evidence from which the court could conclude that [she] had the ability to pay or that she had willfully failed to pay." At the hearing on Mount's motion for reconsideration, the People argued: "This violation isn't for a failure to pay these telephone reporting system fees. It's for not participating in that program . . . ." Mount's trial counsel stated: "I chose not to present evidence that [Mount] is in fact indigent, but she is. She is a public defender client, and the reason I did that, is because . . . there has to be a finding, or some showing, that [the probation violation is] willful."

In denying Mount's motion for reconsideration, the court said: "I think what the defense is trying to do, is turn the burdens upside down in this case. [¶] The responsibility of the probationer, once granted probation and accepting the terms of probation, and knowing the terms and the orders from her officer, is to comply. The order to comply here is to report. It isn't the payment of fees. [¶] If she is indigent, and I am not accepting that, because it's not in the evidence before me. If she is indigent, then she has a way to have that reporting changed, to come to court to have it ordered otherwise. Go to her probation officer, see her lawyer, make some request for modification. [¶] Here the evidence is she wasn't reporting, and to put the burden on the People to explain why she isn't reporting is a burden they don't have to carry."

2. *Analysis*

Mount insists that the trial court abused its discretion because there was no finding that she had the ability to pay the $5 telephone reporting fee.[3] She relies on *Bearden v.*

[3] We assume that Mount's trial counsel preserved the argument at the probation revocation hearing by advancing the ability to pay issue, albeit without the presentation of any evidence.

Georgia, supra, 461 U.S. 660, section 1203.2, subdivision (a), and section 1203.1b, subdivision (a).

In *Bearden v. Georgia, supra*, 461 U.S. 660, the United States Supreme Court held: "[I]n revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment." (*Id.* at p. 672; accord, *People v. Self* (1991) 233 Cal.App.3d 414, 418 ["in exercising its discretion the court must in some manner indicate it has considered the defendant probationer's willful failure to pay and ability to pay restitution and made a determination thereon"].)

Section 1203.1b, subdivision (a), provides, in relevant part: "[I]n any case in which a defendant is granted probation . . . , the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence . . . . The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall determine the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay. The probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver."

The cited authority is inapplicable. Mount's probation was not revoked for failure to pay a fine, make restitution, or reimburse probation costs. The transcript makes clear that the court found Mount violated her probation by failing to report and comply with all orders of her probation officer.

The trial court's finding that Mount willfully failed to report to Probation is supported by the record. The original order of probation instructed Mount that she was to "[p]ersonally appear at the Probation Department" after her release from custody and also "[r]eport to and comply with all orders of the probation officer." Reeves testified that she sent a letter to Mount's last known address explaining the duty to report telephonically every month and providing directions for use of the telephonic reporting system. Mount did not report, via the telephonic system or otherwise, between May 2010 and October 2010. One can infer from this evidence that, despite having ample opportunity to comply, Mount intentionally chose not to. And, unlike the probationers in *Cervantes, supra,* 175 Cal.App.4th at page 295, and *Zaring, supra,* 8 Cal.App.4th at pages 376–377, Mount did not show, or even attempt to show, that her violation was caused by circumstances out of her control.

The $5 telephone reporting fee is not restitution, or a fine, or a probation cost that Mount has been ordered to reimburse. And, even if we assume that the court needed to make a finding regarding Mount's ability to pay the telephone reporting fee, we find no abuse of discretion. Contrary to Mount's suggestion, the record shows that the trial court found Mount was able to pay the telephone reporting fee. The trial court's finding was supported by Reeves's testimony that Mount had previously made payments, totaling $75, towards probationary fines and fees. Although given the opportunity, Mount presented no evidence to suggest that she lacked an ability to pay the telephone reporting fee.[4] Thus, the record supports the trial court's finding that Mount had the ability to pay the telephone reporting fee. No abuse of discretion is shown.

[4] The authority cited by Mount does not persuade us that her inability to pay $5 per month could be inferred from the fact she was represented by a public defender. (See

B. *Presentence Credits*

Mount also argues that she was denied her full award of presentence custody credits by the court's enforcement of a previous waiver that was not knowing and intelligent.

Section 2900.5, subdivision (a), provides, in relevant part: "In all felony and misdemeanor convictions, . . . when the defendant has been in custody . . . all days of custody . . . shall be credited upon his or her term of imprisonment . . . ." But, it is well established that a defendant can waive his or her entitlement to such credits. (*People v. Johnson* (2002) 28 Cal.4th 1050, 1052, 1054–1055 (*Johnson II*); *People v. Johnson* (1978) 82 Cal.App.3d 183, 188–189 (*Johnson I*).) "As with the waiver of any significant right by a criminal defendant, a defendant's waiver of entitlement to section 2900.5 custody credits must, of course, be knowing and intelligent. [Citation.]" (*Johnson II,* at p. 1055.)

Under section 19.2, a defendant may not be sentenced to the county jail as a condition of probation for more than one year. Thus, "[i]t is now common practice for defendants to waive custody credits so as to avoid going to state prison after a probation violation. The waiver allows the court to reinstate probation on the condition that the defendant serve more time in jail. [Citation.]" (*People v. Burks* (1998) 66 Cal.App.4th 232, 234–235.) As the *Johnson I* court explained: "[W]here a defendant who has spent a year in the county jail as a condition of probation subsequently commits a probation violation, the sentencing judge should not be forced to choose between ignoring the violation or imposing sentence to state prison. The court should be free to choose either of these options in the exercise of its discretion but it should also have the power, with the consent of the defendant, to fashion an intermediate disposition by modifying probation to provide for additional time up to one year in jail." (*Johnson I, supra,*

People v. Kay (1973) 36 Cal.App.3d 759, 763 ["[a]ppellants were represented by the public defender or by court-appointed counsel, so apparently they had no ability presently to pay [restitution in excess of $8,000 each]"].)

82 Cal.App.3d at p. 188.) "Since the *Johnson* [*I*] decision, it is well settled that a defendant may waive custody credits as a condition of probation, or in exchange for other sentencing considerations." (*People v. Salazar* (1994) 29 Cal.App.4th 1550, 1553.)

1. *Background*

At the February 1, 2010 hearing, the following colloquy took place:

"THE COURT: All right. With regard to each of these cases, probation is going to be reinstated and extended for a period of three years from today's date. All prior terms and conditions will remain in full force and effect. [¶] Is your client willing to waive credits in the event of a future violation?

"[DEFENSE COUNSEL]: May I have a moment, please?

"THE COURT: Yes.

"[DEFENSE COUNSEL]: Your Honor, do we have an understanding of what that would entail, or what that would be in exchange for?

"THE COURT: No. I just want to know if your client is willing to waive credits in the event of a future violation of probation. This is her choice. I can't order her to do this, but there's going to be consequences if she doesn't.

"[DEFENSE COUNSEL]: She's willing to agree to waive her credits in the event of a future violation.

"THE COURT: In the event of a future violation, is that so?

"[MOUNT]: Yes.

"THE COURT: You understand I can't order you to waive credits [¶] . . . [¶] as a term of probation?

"[MOUNT]: Yes.

"THE COURT: What this means is if you don't violate probation again, this won't have any consequence to you at all, this waiver, but if you do violate probation again you are going to be back where you are now with the potential of being sentenced to the Department of Corrections for as much as three years without the benefit of any time that you would otherwise be entitled to. Do you understand that?

"[MOUNT]: Yes.

"THE COURT: Understanding all of this, are you willing to waive credits?

"[MOUNT]: Yes.

"[DEFENSE COUNSEL]: I think there's [a] little bit of confusion. She just asked me if she's waving [*sic*] 62 days of if [*sic*] she's waving [*sic*] –

"THE COURT: No. This the [*sic*] in the event of a future violation.

"[DEFENSE COUNSEL]: Is the Court asking her to waive her credits in their entirety, or the credits she's just done?

"THE COURT: All credits in the event of a future violation.

"[MOUNT]: That's all I have.

"[DEFENSE COUNSEL]: You have more than that.

"THE COURT: She had credits when she was originally sentenced of 60 days, she may also have credits—did she go to a residential program?

"[MOUNT]: No.

"THE COURT: We need to get going here, please, does she understand the waiver of credits?

"[DEFENSE COUNSEL]: I don't think she does and that's probably partially based on the fact that I don't think she understands the credits that she has. And I wasn't—

"THE COURT: We need to get going here. The credits you have here include the credits for the time you were originally sentenced to jail in February of 2009, that was 60 days.

"[MOUNT]: I don't understand.

"THE COURT: You also received credits for 63 days when Judge Kinnicutt sentenced you in 2007.

"[MOUNT]: So, what I understand is once you're sentenced to those days and you have to do them don't they go away any ways or later on that could be toward a sentence? I thought they were already, basically once you're sentenced to a certain amount of days and you do that amount of days, . . . you don't have credit of them

anymore. I'm confused on that part. I thought once I was sentenced and I do those days, they go away.

"THE COURT: I don't know what you mean by 'they go away.' If you received a subsequent—if you get sentenced to state prison for violating, the state prison sentence will include credits, would include credit for the time you spent in county jail.

"[MOUNT]: Oh, for all the time I've ever spent?

"THE COURT: It would, unless you waive the credits, in which case it won't.

"[MOUNT]: Okay.

"THE COURT: Do you understand that now?

"[MOUNT]: Yes.

"THE COURT: So, this means that if you're back here on a violation of probation again, from I see here you have about 180 days of credits that you would be entitled to, *it might be a little more than that. Plus you may have credits for other things that I'm not aware of.*

"[MOUNT]: For other counties?

"THE COURT: No, just in this case.

"[MOUNT]: Okay. I understand.

"THE COURT: The point, again, I'm asking you is if you are willing to waive these credits, lose them in effect, if you violate probation again in the future? [¶] Look, we're not playing games here. That's a yes or no question.

"[MOUNT]: Yes.

"THE COURT: All right. We'll note the waiver then of credits past, present and future, in the event of a future violation of probation. [¶] How much time does she have today, actual time?

"[DEFENSE COUNSEL]: Actual time . . . probation's calculations are correct. So that's 111 on FCR249525, plus I guess under the new law that would be 110, so that's 221 days on FCR249525.

"THE COURT: She was only in custody most recently for 31 days on these cases; correct?

"[DEFENSE COUNSEL]: So I guess the new credits would apply to that 31 days.

"THE COURT: Yes.

"THE COURT: All right. I'll do this, for the violation of probation at this time she's going to be ordered to serve 61 days in the Solano County Jail, against which she'll receive credits for 31 actual days plus 30 days 4019 credits for a total credit award of 61 days. Which means that you're not going to be placed back in custody at this time Ms. Mount, but if you do anything like you've done in the past and you're back here again, I'm just going to be very disinclined to continue you on probation. Do you understand that?

"[MOUNT]: Yes."

2. *Analysis*

First, we note that Mount did not raise any objection to the waiver until *after* she was sentenced to a state prison term in 2011. Thus, we could conclude she has forfeited her objection to the validity of the waiver. (See *People v. Torres* (1997) 52 Cal.App.4th 771, 782 [when probationer does not object to credit waiver condition at time of sentencing, "the matter may not properly even be raised for the first time on appeal"].) But, even if we assume that Mount's argument is properly before us, as a challenge to the trial court's denial of her motion to recalculate presentence custody credits, we would conclude that it has no merit.

"To determine whether a waiver is knowing and intelligent, the inquiry should begin and end with deciding whether the defendant understood he was giving up custody credits to which he was otherwise entitled." (*People v. Burks, supra,* 66 Cal.App.4th at p. 236, fn. 3.) "The better practice is for sentencing courts to expressly admonish defendants who waive custody credits under *Johnson* [*I*], *supra,* 82 Cal.App.3d 183, that such waivers will apply to any future prison term should probation ultimately be revoked and a state prison sentence imposed. (See, e.g., *People v. Salazar*[, *supra,*] 29 Cal.App.4th [at p.] 1554; *People v. Ambrose* (1992) 7 Cal.App.4th 1917, 1923.) A sentencing court's failure to include such an explicit advisement will not, however, invalidate a *Johnson* waiver by which the defendant is otherwise found to have

knowingly and intelligently relinquished his or her right to custody credits under section 2900.5." (*People v. Arnold* (2004) 33 Cal.4th 294, 309, parallel citations omitted.) There is no formula for advising a defendant of his or her rights, and no magic words are required as long as the record shows from the totality of the circumstances that the defendant's waiver was knowing and intelligent. (*People v. Howard* (1992) 1 Cal.4th 1132, 1175; *People v. Murillo* (1995) 39 Cal.App.4th 1298, 1304.) On appeal, we determine de novo whether the appellant's waiver was knowing and intelligent. (See *People v. Panizzon* (1996) 13 Cal.4th 68, 80.)

Mount contends that she was confused and did not understand: (1) the full number of credits she was giving up, or (2) what she would receive in exchange for the waiver. She maintains that she was coerced into the waiver, despite not understanding it, and that the coercive nature of the waiver is evidenced by the trial court's impatience and the fact that she did not discuss the waiver with her attorney *before* the February 1, 2010 hearing began. Mount suggests that a waiver of presentence credits is knowing and intelligent only if the defendant had an opportunity to discuss the possibility of such a waiver before the hearing at which he or she ultimately enters the waiver and only if trial counsel explicitly joins in the waiver. She relies on *People v. Correll* (1991) 229 Cal.App.3d 656 (*Correll*) and *People v. Jeffrey* (2004) 33 Cal.4th 312 (*Jeffrey*) to support her proposition and then points out how the circumstances of her own waiver were different.

In *Correll, supra,* 229 Cal.App.3d 656, the reviewing court rejected the defendant's argument that his waiver of presentence credits was coerced. (*Id.* at p. 659.) The court reasoned: "[A]ppellant told the probation officer before the sentencing hearing that he would waive his credits. Moreover, appellant's counsel informed the trial court that appellant was willing to waive credits before the court requested that he do so. Thus, any assertion that the judge coerced appellant into waiving his credits is not supported by the record. Additionally, the judge voir dired appellant on his knowledge of and willingness to waive his presentence credits. Appellant repeatedly affirmed that he understood what waiving his credits meant and that he was willing to waive his credits.

Therefore, appellant clearly waived his credits knowingly, intelligently and voluntarily." (*Ibid*.)

In *Jeffrey*, *supra*, 33 Cal.4th 312, the defendant's waiver of both past and future custody credits was determined to be knowing and intelligent. (*Id.* at p. 319.) The record, in *Jeffrey*, indicated that the defendant had discussed the waiver with counsel and counsel joined in the waiver. (*Ibid.*) Nothing in either *Correll* or *Jeffrey* suggests that a waiver is coerced *unless* a defendant's counsel expressly joins in the waiver and the defendant has the opportunity to discuss waiver with her counsel before the option is discussed in open court. Cases are not authority for issues that are not considered. (*People v. Jones* (1995) 11 Cal.4th 118, 123, fn. 2.)

The record clearly shows that Mount discussed the waiver with her attorney during a pause in proceedings. That this discussion did not occur earlier is not determinative. Mount's counsel expressed no objection to the waiver. Mount was also advised, on the record, that a waiver of credits would apply to any subsequent state prison sentence. The record, taken as a whole, suggests that Mount made a knowing choice to waive her conduct credits after an extended colloquy with the court regarding the consequences of such a waiver, after being given an approximation of the number of credits she had, and after the trial judge warned her that "there's going to be consequences if she doesn't."[5] Contrary to Mount's assertion, the record makes clear that her counsel knew precisely how many days of credit she was entitled to. In any event, "[t]he mere fact that the right to custody credit could not then be defined with mathematical precision does not render the waiver invalid." (*People v. Ambrose*, *supra*, 7 Cal.App.4th at p. 1923.) The record before us shows that Mount understood, at the time of her waiver, that she was giving up custody credits to which she was otherwise entitled.

III. DISPOSITION

The orders are affirmed.

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[5] We agree with the People that the court's statement, in context, was clear. Mount was facing the possibility of additional jail time for the probation violation.

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Bruiniers, J.

We concur:

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Jones, P. J.

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Simons, J.